

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSHUA CONVERSE, : **CIVIL NO. 1:CV-11-2032**
Petitioner : (Judge Rambo)
v. : (Magistrate Judge Mannion)
WARDEN EBBERT, :
Respondent :
:

MEMORANDUM

Before the court is a March 2, 2012 report and recommendation of the magistrate judge (Doc. 18) to whom this matter was referred in which he recommends that the petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 (Doc. 1) be dismissed. Petitioner has filed objections (Doc. 20). The matter is ripe for disposition.

Petitioner was found guilty of committing the prohibited act of “Giving Money or Anything of Value to, or Accepting Money or Anything of Value from, Another Inmate or Any Other Person Without Staff Authorization in Violation of Code 328.” The magistrate judge, in addressing the petition, proceeded to evaluate whether Petitioner received his right of due process when he was found guilty of the above charge.

In Petitioner's objection to the report and recommendation, he claims that the "crux of his argument is based simply that he is not guilty of receiving money from another inmate." (Doc. 20, p. 1.) Petitioner further claims he has not raised a due process issue. (Doc. 20, p. 2.) Petitioner appears to interpret Rule 328 as one prohibiting the exchange of money between inmates. In fact, it is a violation of

Bureau of Prisons Rule 328 to receive anything of value from any other person without staff authorization. The magistrate judge addressed this part of Rule 328, stating, “. . . the DHO incident report clearly indicates that in addition to the petitioner receiving money from another inmate in violation of Rule 328, the evidence indicated that petitioner solicited the services with a financial obligation which also violates the BOP policy.” (Doc. 18, p. 8.)

The DHO incident report shows that at the disciplinary hearing evidence was produced that Petitioner wrote to Inmate Lopez stating, “I expect the balance to be sent to me within two weeks.” This letter was dated April 11, 2011. A money deposit report dated April 21, 2011, indicated Petitioner received \$50.00 from a person named Marquez who has the same home address as Inmate Lopez. (Doc. 15, Ex. E.) The receipt of money from Marquez is covered by that portion of Rule 328 which states, “anything of value from . . . or any other person without staff authorization.” Based on the evidence presented, Petitioner was properly found guilty of violating Rule 328.

The report and recommendation of the magistrate judge will be adopted. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: April 19, 2012.

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ORDER

In accordance with the accompanying memorandum, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Mannion (Doc. 18).
 - 2) The petition filed pursuant to 28 U.S.C. § 2241 (Doc. 1) is dismissed.
 - 3) The motion to expedite (Doc. 17) is dismissed as moot.
 - 4) The Clerk of Court shall close the file.

s/Sylvia H. Rambo
United States District Judge

Dated: April 19, 2012.